IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/10/2004

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.10720 of 1997

1.A.P.Balakrishnan
2.S.Panchavarnam
3.A.Natarajan
4.S.Rakku
5.R.Jayarama Chandran
6.V.Vijayalakshmi
7.V.Balaji ... Petitioners

-Vs-

1. The District Collector
Madurai District, Madurai

2. The Special Tahsildar
Land Acquisition No.2
Harijan Welfare Scheme
Madurai-625 020 ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records of the proceedings of the first respondent made in ROC.No.150109/93-L7 and published in Madurai District Gazette dated 22.09.1995 and to quash the same.

For Petitioners : Mr.P.T.J.Narendravasan

For Respondents : Mr.R.Lakshmi Narayanan
Government Advocate.

:ORDER

This writ petition has been filed for the issuance of a writ of Certiorari, to call for the records of the proceedings of the first respondent made in ROC.No.150109/93-L7 and published in Madurai District Gazette dated 22.09.1995 and to quash the same.

2. The case of the petitioner is that the petitioner land has been acquired under Tamil Nadu Act 31 of 1978. While acquiring the land, the Court procedure contemplated under Section 4(2) of the Act has not been complied

with. Though there is specific averment in the affidavit, Section 4(1) Notification was not served on the petitioners.

3. In the counter affidavit, there is a bald denial of the following words:
"Regarding Ground(e), I submit that it is not correct to state that no notice under section 4(2) of the Land Acquisition Act 1978 was issued. The same was served to them through the Village Administrative Officer and they were also enquired by the Special Tahsildar(L.A.). Moreover they have not turned up for 5(1) enquiry, though enquiry notice was sent to them by Registered Post. However the contention is not sustainable in law."
From the above, it is seen that the respondents does not come out with the full facts, not even disclosing the date on which the notice was served, nor they filed the acknowledgment in the typed set. In order to substantiate this version in the counter, time was given to the Government Advocate to

produce the file. The Government Advocate stated that in spite of repeated requests, the file is not submitted to him. Therefore, this Court is left with no option except to pass orders on the basis of the available records.

4. The petitioners have categorically averred in the affidavit that Section 4(2) notice was not served on them. To issue notice under Section 4(1) of the Tamil Nadu Act, enquiry should be conducted as stated under Section 4(2) of the Act. In this case, there is no evidence to show that Section 4(2) notice was served as contemplated. Only notice served on them was Form (III) under Rule 5(1) (it is typed as Form-5 may be it is a typographical error). In view of the mandatory provision contemplated under Section 4(2) of the Act, all the parties interested in the land has not been given notice to show cause as to why the land has not been acquired under this Act. In those circumstances, this Court is constrained to come to a conclusion that the mandatory provision of Section 4(2) of the Act has not been complied with. Therefore, the notice issued under Section 4(1) of the Act gets vitiated is not in accordance with law.

5. In the result, the writ petition is allowed as prayed for. The impugned order is set aside. No costs.

Index:yes
Internet:yes

ksr

To

1. The District Collector
Madurai District, Madurai

2. The Special Tahsildar
Land Acquisition No.2
Harijan Welfare Scheme

Madurai-625020